

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

LINDSEY WARD, Personal Representative
of the ESTATE OF KLINT MITCHELL,
LINCOLN MITCHELL, ALEXIS MITCHELL,
and LINDSEY WARD in her individual capacity,

Plaintiffs,

v.

AIR METHODS CORPORATION, a Delaware
Corporation, and/or any associated, subsidiary,
managed, owned or controlled entities, and
ALLIANZ GLOBAL RISKS US INSURANCE
COMPANY, and/or any parent, associated,
subsidiary, managed, owned, or controlled
entities, Illinois Corporations, and XYZ unknown
insurance company,

Defendants.

Case No.: 21-CV-343

AIR METHODS CORPORATION'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1332, 28 U.S.C. § 1441, and 28 U.S.C. § 1446, Air Methods Corporation ("Air Methods") as a named Defendant, hereby gives notice of its removal of this diversity action from the Circuit Court of Onieda County, Wisconsin where it is now pending as Case Number 2021-CV-000057, to the United States District Court for the Western District of Wisconsin. In support of this Notice of Removal, Air Methods asserts and avers as follows:

FACTUAL ALLEGATIONS SUPPORTING REMOVAL

1. On April 16, 2021, Lindsey Ward, individually and as personal representative for the Estate of Klint Mitchell, along with her minor children, Lincoln Mitchell and Alexis Mitchell, commenced a lawsuit in the Circuit Court of Onieda County, Wisconsin under Case Number 2021-

CV-000057 against Defendants, Air Methods and Allianz Global Risks US Insurance Company (“Allianz”). The Onieda County Complaint relates to an April 26, 2018 fatal crash in Hazelhurst, Wisconsin involving a Eurocopter AS 350 B2 helicopter owned and operated by Air Methods as an emergency air ambulance.

2. Pursuant to 28 U.S.C. §1446(a), Air Methods attaches to this notice the following papers, which are all of the process, pleadings, and orders served on it prior to removal of this action:

- a. A true and correct copy of the Onieda County Circuit Court Summons and Complaint as **Exhibit A**.

3. Pursuant to 28 U.S.C. § 1446(a)(2)(A), Allianz’s written consent of removal is attached to this notice as **Exhibit B**.

4. The Estate of Klint Mitchell is a Michigan resident as Mitchell was a life-long Michigan resident. *See Exhibit A*, ¶ 8; 28 U.S.C. § 1332(c)(2) (“the legal representative of the estate of the decedent shall be deemed to be a citizen only of the same State as the decedent . . .”).

5. Klint Mitchell’s fiancée, Lindsey Ward, was a Michigan resident at the time of Klint Mitchell’s death. *See Exhibit A*, ¶ 18.

6. Klint Mitchell’s minor children, Lincoln Mitchell and Alexis Mitchell, have been Michigan residents at all relevant times since Klint Mitchell’s death. *See Exhibit A*, ¶¶ 18 & 19.

7. Air Methods is a corporation organized under the laws of the State of Delaware and Air Methods designates its corporate headquarters as Englewood, Colorado. For the purpose of determining diversity, Air Methods is a citizen of Delaware and Colorado. *See* 28 U.S.C. § 1332(c)(1) (“a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of

business”).

8. Upon information and belief, Allianz is a corporation organized under the laws of the State of Illinois and its principal place of business is located at 225 W. Washington Street, Suite 1800, Chicago, Illinois. For the purpose of determining diversity, Allianz is a citizen of Illinois. *See* 28 U.S.C. § 1332(c)(1) (“a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business”).

9. Plaintiffs’ Complaint asserts on behalf of each Plaintiff eight counts against Defendants and seeks damages for pre-impact pain and suffering, mental anguish, fright and shock; post-impact and pre-death physical pain and suffering, mental anguish, fright, and shock; severe emotional distress; punitive damages; economic loss including past wages and benefits, loss of future earning capacity, loss of support, and loss concerning household services; loss of parental training and guidance; loss of moral support; loss of love; loss of protection; loss of assistance; loss of care; loss of companionship; loss of affection; and loss of consortium. *See Exhibit A*, ¶¶ 121, 124, 143, 151, 155, and 161.

10. Plaintiffs’ Complaint asserts that the amount in controversy exceeds \$10,000. *See Exhibit A*, ¶ 6.

11. A good-faith estimate of the stakes as to each Plaintiff’s claims for damages against Defendants supports the jurisdictional finding that the amount in controversy exceeds \$75,000. *See Oshana v. Coca-Cola Co.*, 472 F.3d 506, 511 (7th Cir. 2006).

FEDERAL SUBJECT MATTER JURISDICTION EXISTS

12. Pursuant to 28 U.S.C. § 1332, subject matter jurisdiction exists because Plaintiffs and Defendants are completely diverse and the amount in controversy, exclusive of interest and

costs, exceeds \$75,000. 28 U.S.C. § 1332(a)(1); *Oshana*, 472 F.3d at 511.

A. Complete Diversity Exists Between the Parties.

13. The Estate of Klint Mitchell is citizen of Michigan – the state where Klint Mitchell was a citizen immediately prior to his death. *See* 28 U.S.C. § 1332(c)(2) (“the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent”). **Exhibit A, ¶ 8.**

14. Lindsey Ward in her individual capacity has been a resident of Michigan at all times relevant. **Exhibit A, ¶ 18.**

15. Mitchell’s minor children, Alexis and Lincoln Mitchell, have been residents of Michigan at all times relevant. **Exhibit A, ¶¶ 18 & 19.**

16. Air Methods, as an incorporated entity, is a citizen of Delaware and Colorado, where it respectively is incorporated and maintains its principal place of business. *See* 28 U.S.C. § 1332(c)(1).

17. Allianz, as an incorporated entity, is a citizen of Illinois, where it respectively is incorporated and maintains its principal place of business. *See* 28 U.S.C. § 1332(c)(1).

18. Complete diversity among the parties to this action exists under 28 U.S.C. § 1332(a)(1).

B. This Notice of Removal is Timely.

19. This notice of removal is being filed within 30 days of Plaintiffs serving Air Methods by personal service on April 26, 2021. Accordingly, Air Method’s removal is timely pursuant to 28 U.S.C. § 1446(b).

C. The Amount in Controversy Exceeds the Jurisdictional Requirement.

20. Plaintiffs allege that the amount in controversy exceeds \$10,000. *See* **Exhibit A, ¶**

6.

21. The amount in controversy for diversity purposes is the amount required to satisfy the plaintiffs' demands in full on the day the suit begins or, in the event of removal, on the day the suit was removed. *Oshana*, 472 F.3d at 511.

22. The proponent of jurisdiction has the burden of showing by a preponderance of the evidence facts that suggest the amount-in-controversy requirement is met. *Id.* That is easier said than done when the plaintiff, the master of the complaint, does not want to be in federal court and provides little information about the value of his or her claims. *Id.* In such a case, a good-faith estimate of the stakes is acceptable if it is plausible and supported by a preponderance of the evidence. *Id.*

23. Once the defendant in a removal case has established the requisite amount in controversy, the plaintiff can defeat jurisdiction only if it appears to a legal certainty that the claim is really for less than the jurisdictional amount. *Id.*

24. The Estate of Klint Mitchell's claims seek compensation for his pre-impact pain and suffering, mental anguish, fright, and shock along with his post-impact and pre-death physical pain and suffering, mental anguish, fright, and shock. See **Exhibit A**, ¶¶ 121, 124, 143, 151, 155, and 161.

25. Plaintiffs' complaint alleges that the remaining wrongful death plaintiffs, Lindsey Ward, Alexis Mitchell, and Lincoln Mitchell, in their individual capacity, are claiming damages for, among other things, economic loss including past wages and benefits, loss of future earning capacity, loss of support, and loss concerning household services; loss of moral support; loss of love; loss of protection; loss of assistance; loss of care; loss of companionship; loss of affection; and loss of consortium. See **Exhibit A**, ¶¶ 121, 124, 143, 151, 155, and 161.

26. Further, these wrongful death plaintiffs seek economic losses for Mitchell's past and future wage loss. See **Exhibit A**, ¶¶ 121, 124, 143, 151, 155, and 161.

27. Based upon the facts as alleged in Plaintiffs' Complaint regarding Mitchell's pre-death pain and suffering and Wisconsin precedent, a "good-faith estimate of stakes" establishes that the amount in controversy as to the Estate's damages exceeds the \$75,000 jurisdictional threshold. See *Oshana*, 472 F.3d at 511.

28. Consequently, the amount in controversy as to each Plaintiff satisfies the requirements of 28 U.S.C. § 1332(a).

D. Conclusion

29. Air Methods has properly established its right to remove this lawsuit to this United States District Court. Air Methods further requests all relief that is just and appropriate under the circumstances.

Dated this 19th day of May, 2021.

/s/ William J. Katt
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document, DEFENDANT, AIR METHODS CORPORATION'S NOTICE OF REMOVAL, was served on the below attorneys of record:

R. JAY HARDIN, ESQUIRE, of Hardin Law Firm, 125 S. Park Street, Suite 200, Traverse City, Michigan 49684, Jay@hardinlawtc.com, via Electronic Mail this 19th day of May, 2021.

/s/ Kelly Wicinski

Kelly Wicinski